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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

VIA COURIER

Re: Ex Parte Presentation in Dockets 98-11, 98-26, 98-32 and 98-91

Dear Ms. Salas:

Last week, Ruth Milkman and I met with several members of the Commission's staff in connection with the above dockets. I am submitting this response to certain specific questions that arose during those meetings.

I. THE COMMISSION SHOULD ENSURE TRUE PARITY EXISTS BETWEEN CLECS AND ILEC DATA SUBSIDIARIES

NorthPoint Communications supports the option of a separate subsidiary requirement for ILEC data services as a way of fostering incentives for CLEC and ILEC investment, and provision of, advanced data services. In principle, the idea that an ILEC affiliate stands in the shoes of the CLEC creates parity between the two groups since neither is subject to the unbundling and resale requirements of Section 251, and both have equivalent access to the ILEC network. In addition, this equivalent access should create additional incentives for the ILEC to carry out fully its obligations under Section 251. In order to achieve these goals, however, it is critical that the details of the separate subsidiary be right, and, in particular, that true parity be achieved.

In NorthPoint Communications' presentations to the FCC on July 23 and 24, 1998, we offered three simple rules for effective separate subsidiaries; (1) require complete collocation parity; (2) ensure loop and OSS parity; and (3) prevent below-cost pricing. We now offer three examples that we believe should be spelled out in the Commission's decision.

1. Virtual collocation parity. The ILEC affiliate should receive the same treatment as the CLEC -- no better and no worse. If the ILEC affiliate elects physical collocation, it should stand in line with CLECs for central office space. If the ILEC affiliate elects virtual collocation, the

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terms should be the same for the affiliate as they are for CLECs. For example, many ILECs insist on performing the installation and maintenance of all virtually collocated CLEC equipment, and the charges for installation and maintenance often greatly exceed the rates that CLECs have negotiated with third party vendors. If the ILEC requires that it perform the installation for the CLEC, the requirement also must extend to the ILEC affiliate, so that the ILEC employees (not the ILEC affiliate employees) install the equipment and charge the ILEC affiliate. Similarly, if the ILEC allows no one else to perform maintenance functions such as emergency repair in the event of an outage, the ILEC must extend this rule to its affiliate, and must charge the affiliate for maintenance costs, such as training.

2. DSLAMs in the neighborhood. Some ILECs have indicated an interest in placing Digital Subscriber Loop Access Multiplexers (DSLAMs) in remote sites. If the ILEC affiliate is permitted to place its DSLAM in remote sites, CLECs should be permitted to do so as well.

3. Digital loop parity. Today, some ILECs provide unbundled digital loop while others do not. If the ILEC affiliate receives unbundled digital loops, CLECs also should be able to obtain unbundled digital loop.

In addition, if the Commission proposes a separate affiliate option in an NPRM, or even adopts the separate affiliate approach in an order with an effective date some months after adoption, there is a serious possibility for ILEC gaming. For example, ILECs might collocate a large amount of equipment in central offices, effectively using up existing space and foreclosing competitive collocation, and then seek to transfer that equipment to the separate affiliate. In this case, CLECs would face the worst of both worlds -- no unbundling and resale obligations would attach to the part of the network that is transferred, and the ILEC would have frustrated the goal of having the ILEC affiliate and CLEC be in the same position with respect to obtaining collocation.

To avoid this scenario, the Commission should require that any equipment that is put in place by the ILEC under the existing regulatory regime be subject to the Section 251 requirements in perpetuity, and that these requirements cannot be evaded by subsequent transfer to an affiliate. The ILEC would retain the option of setting up a separate affiliate and making its investment through that affiliate.

II. THE COMMISSION SHOULD SUPPLEMENT ANY SEPARATE AFFILIATE REMEDY WITH THE INDIVIDUAL REMEDIES IDENTIFIED IN NORTHPOINT'S JULY 23 EX PARTE.

Even if the Commission establishes a separate affiliate option that creates incentives for ILECs to reach full compliance with Section 251, one or more ILECs may elect to offer data services through an integrated company. In order to further the deployment of advanced services, the Commission should build on the remedies in the ALTS petition, adding the remedies suggested by NorthPoint in its July 23 ex parte.

The Association for Local Telecommunications Service has filed a petition for Declaratory Ruling with this Commission contending that the best way of promoting deployment advanced telecommunications service is to issue a ruling that the interconnection requirements of sections 252/252 of the 1996 Telecommunications Act encompass data services. While the ALTS pleading has laid out the general concepts for such an order, NorthPoint Communications' July 23, 1998 ex parte submission identified specific procompetitive steps the Commission should take to promote the deployment of broadband services, as contemplated by section 706. Below, NorthPoint has listed the proposals contained in the ALTS petition and indicated how they should be supplemented

Collocation

ALTS has requested that the Commission:

Establish that CLECs can use virtual collocation arrangements to combine UNEs

Provide for "cageless" collocation that allows CLECs to avoid the cost of constructing enclosures for their collocation space, and allows them to collocate in a total area of less than 10 square feet.

Provide for collocation cages of 25 square feet, and other increments less than 100 square feet.

Allow multiple CLECs to share a single collocation cage.

Allow collocated CLECs to establish cross-connects to cages of other collocated CLECs.

Eliminate restrictions on CLECs' ability to collocate remote switching modules, xDSL electronics, internet routers and other advanced data equipment.

Establish rates that reflect the total long run incremental cost provisions that the Commission has found to be required by Sections 251-252 of the Act.

Establish reasonable and nondiscriminatory rules for the allocation of space preparation charges among collocated carriers.

Establish reasonable and nondiscriminatory deployment intervals for new collocation arrangements and expansion of existing arrangements.

Incorporate into the FCC's collocation rules the most innovative and effective collocation provisions established by the State commissions.

ALTS Petition at 21-22.

In addition, however, this Commission should also require the specific remedies identified by NorthPoint in its July 23, 1998 ex parte. Specifically, the Commission should take measures to increase the space available for physical collocation, including: requiring the ILECs to submit detailed floor plans to state commissions and interested CLECs wherever they contend space for physical collocation is unavailable (Remedy 1); requiring ILECs to remove obsolete equipment and non-critical administrative offices in central offices to increase the amount of space available for collocation (Remedy 2); and prohibiting ILECs from warehousing space for themselves (Remedy 3).

The Commission also should take measures excessive waits for collocation by requiring ILECs to: file collocation tariffs (Remedy 4); provide collocation quotes within 10 days (Remedy 5); provide standard cage completion dates on no greater than 90 days for conditioned space (Remedy 6); and require ILECs to provide cages in unconditioned space in 120 days (Remedy 7). As suggested by NorthPoint, failure to meet these cage completion obligations should be grounds for sanctions or withholding of 271 relief (Remedy 8).

The Commission also should decrease excessive charges for collocation by: requiring ILECs seeking section 706 relief to lower collocation costs (Remedy 9); requiring ILECs to eliminate first-in penalties for unconditioned space, as suggested by ALTS (Remedy 10); and requiring ILECs to impute the cost of collocation into their retail tariffs (Remedy 11).

The Commission also should mandate concrete steps to promote alternatives to physical collocation. In particular, the Commission should require that ILECs make available: virtual collocation arrangements in which CLECs can own, install, and maintain their own equipment (Remedy 12), and cageless collocation at rates significantly less than physical collocation (Remedy 13).

Finally, as suggested by ALTS, this Commission should remove anticompetitive restrictions on equipment in collocation cages. More specifically, the FCC should specify that: Digital Subscriber Line Access Multiplexers can be placed in collocation cages (Remedy 14); remote access management and retail services can be placed in collocation cages (Remedy 15); ILECs may only hold CLEC equipment to legitimate safety standards (Remedy 16); and that ILECs must list all approved equipment and all equipment they use (Remedy 17).

Loops

ALTS also has proposed that the Commission:

Require unbundling of xDSL loops and removal of load coils and bridge taps; provide loop qualification database to verify which loops have load coils and bridge taps.

Require ILECs to provide multiplexing equipment in a reasonable time period.
ALTS Petition at 17.

NorthPoint agrees that the ILECs should be required to provide unbundled DSL loops (Remedy 18). In addition, NorthPoint contends that the ILECs should be required to meet pro-competitive loop provisioning intervals (Remedy 19), and that standardization and imputation of loop costs should be required as a precondition of section 706 relief (Remedy 20). Finally, NorthPoint contends that spectrum interference issues should be resolved through a collaborative, not a unilateral, process (Remedy 23).

Operational Support Systems

ALTS also has urged that the Commission should require equal access to OSSs. ALTS Petition at 22-23.

As suggested by ALTS, NorthPoint believes that ILECs should be required to provide access to loop qualification databases as a precondition to section 706 relief (Remedy 21). In addition, however, NorthPoint suggests that standardization and imputation of OSS charges should be made a precondition to section 706 relief (Remedy 22).

III. THIS COMMISSION SHOULD POLICE AGAINST ANTICOMPETITIVE ILEC PRACTICES

At our July 23, 1998 meeting with the FCC, NorthPoint was asked to provide an example of how anticompetitive ILEC practices can delay NorthPoint's ability to roll-out its xDSL service. One such example arose recently, when a potential strategic partner asked NorthPoint how long it would take to obtain service in Arizona. NorthPoint's estimate of the best-case deployment schedule was:

7/98: NorthPoint applies for a CPCN from the Arizona Corporation Commission ("ACC").
-- ACC takes 6-9 months to approve -- estimated approval date 3/99.

3/99: NorthPoint submits U S WEST/NorthPoint interconnection agreement to ACC -- ACC takes three months to approve -- complete by 6/99.

6/99: NorthPoint can request quote for collocation space -- complete by 8/99.

8/99: NorthPoint can purchase collocation cage: 4-month construction interval -- complete by 12/99.

By refusing to allow NorthPoint to order collocation until it has both a CPCN and a signed and approved interconnection agreement -- even though NorthPoint has indicated it would be willing to pay for the collocation space even if its CPCN application were denied or an interconnection agreement were never reached -- the incumbent LEC, U S WEST, has effectively delayed the advent of xDSL competition in Arizona by almost a year. Accordingly, as set forth in NorthPoint's July 23, 1998 ex parte, this Commission should ensure prompt collocation ordering rights by mandating that ILECs tariff collocation and that CLECs be allowed to order collocation while CPCN applications are pending and interconnection negotiations are in progress.

IV. CUSTOMER PROPRIETARY NETWORK INFORMATION

It is critical that the Commission's rules with respect to Customer Proprietary Network Information (CPNI) operate in a way that ensures that any Section 272 data affiliate cannot use CPNI furnished by the ILEC to market data services to the ILEC's local customers. Under the Commission's interpretation of Section 222 of the Act, this may require that the services offered by the Section 272 data affiliate be defined as different services than those offered by the ILEC. For example, an ILEC affiliate should not be permitted to use ILEC CPNI to market a Digital Subscriber Line (DSL) service to a customer that takes local service from that ILEC. If the ILEC affiliate were permitted to use the CPNI for marketing, it would unfairly advantage the ILEC affiliate over its DSL competitors in a way that appears completely inconsistent with the goal of having ILEC affiliates and CLECs compete on the same terms.

I have enclosed an original and eight copies of this letter. Please include a copy of this letter in each of the above dockets, and date-stamp and return the extra copy in the enclosed envelope. Thank you for your assistance in this matter.

Sincerely yours,



Steven Gorosh
Vice-President & General Counsel

cc: Larry Strickling
Tom Powers
James Casserly
Kevin Martin
Paul Gallant
Kyle Dixon
Dale Hatfield
Stagg Newman
Robert Pepper
Elliot Maxwell
Blaise Scinto
Jordan Goldstein
Melissa Newman
Elizabeth Nightingale
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